

In the Matter of License No. 215957 and all other Licenses
Issued to: DANIEL J. RICHARDS

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1200

DANIEL J. RICHARDS

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 1137.11-1.

By order dated 7 July 1959, an Examiner of the United States Coast Guard at Jacksonville, Florida suspended, on probation, Appellant's licenses upon finding him guilty of negligence. The specification found proved alleges that while serving as Master on board the United States SS WANG ARCHER under authority of the license above described, or about 9 May 1959, Appellant failed to exercise due caution in the navigation of his vessel, and thereby caused the vessel to run aground.

At the hearing, Appellant was represented by counsel of his own choice. Appellant entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence the testimony of three witnesses and various entries in the ship's Official Logbook. At this point, the Examiner denied Appellant's motion for a mistrial on the ground that the Examiner had a fixed opinion, prior to the hearing, that Appellant was guilty of negligence and this deprived Appellant of a fair and impartial hearing.

In defense, Appellant offered in evidence his testimony.

At the end of the hearing, the Examiner rendered the decision in which he concluded that the charge and specification had been proved. An order was entered suspending all licenses, issued to Appellant, for a period of four months on twelve months' probation.

FINDINGS OF FACT

On 9 May 1959, Appellant was serving as Master on board the United States SS WANG ARCHER and acting under authority of his License No. 215957 when the ship ran aground in 26 feet of water at a point eight tenths of a mile offshore from the southwest side of Grand Bahama Island, British West Indies.

The WANG ARCHER is a steam freighter of 7,607 gross tons and 439 feet in length. On this voyage, she was carrying a cargo of bulk wheat from Baton Rouge, Louisiana bound for Calcutta, India

with an unexpectedly scheduled stop at Freeport, Pinder Point, at the southwesterly tip of Grand Bahama Island. The ship's draft was 25 feet, 6 inches forward and 31 feet, 8 inches aft after taking on bunker fuel at Freeport.

The ship arrived at Pinder Point at 0800 on 8 May and departed early on the morning of 9 May. During the afternoon of 8 May, Appellant plotted on H.O. Chart 0026e, a large scale chart of the area, the intended course to be followed upon departure. Appellant had no prior experience in these waters. This chart indicates that the 100-fathom curve extends northwesterly from Pinder Point approximately parallel to the shore of the island at a distance of about three-eighths of a mile. A smaller scale chart (C. & G.S. 1112) which was on board indicates that the 100-fathom curve is about a mile from the shore in the vicinity of the grounding. On H.O. Chart 0026e, there are two soundings recorded (212 and 188 fathoms) between Pinder Point and the location of the casualty, a distance of slightly less than 4 miles. Also on this chart is a general warning which states: "CAUTION The charted position, size, shape and orientation of the islands and banks in the Bahama Islands are unreliable." Appellant plotted a course of 310 degrees true on the chart. This line was roughly parallel to the shore of the island and the 100-fathom curve as shown on the chart. At most places approaching the point of the grounding, the plotted line was slightly more than a mile outside of chart's 100-fathom curve. There is more than 50 miles of deep, unobstructed water to the west of this area extending to the east coast of Florida.

The WANG ARCHER got under way at 0333 with a pilot on board. A southerly course was steered until the pilot left the ship and Appellant took the conn. Appellant had not slept for almost twenty-four hours due to arrival at Freeport and fueling difficulties. The Second Mate, Third Mate and a helmsman were also on the bridge. At 0348, Appellant ordered a change of course to 309 degrees gyro and full speed ahead. The ship was approximately three-fourths of a mile inside the course line which Appellant had plotted on the chart. The fathometer was turned on at 0349 and it consistently gave readings fluctuating between 4 and 6 fathoms until the time of the grounding. Appellant observed these fathometer readings and, at 0357, ordered a course change to 304 degrees gyro while making full speed ahead of 15 knots. At 0400, course was changed to 295 degrees gyro without any change in speed. At 0404, the ship ran aground in 26 feet of water, eight-tenths of a mile offshore, and 3.8 miles from Pinder Point. At this point, the 100-fathom curve was three-tenths of a mile from the shore and the intended position of the vessel on the plotted course line was one mile outside of the 100-fathom curve. Hence, the grounding occurred midway between the 100-fathom curve and the plotted course line-one-half mile from each. At all times leading up to the casualty, the chart indicated that the ship was outside of the 100 fathom curve.

There were no injuries or deaths as a result of this grounding. No material defects or failures were involved. The ship remained aground for a week until she was refloated with the assistance of tugs. She then proceeded to Jacksonville to be placed in a drydock. There is no evidence in the record as to the extent of the damage to the ship.

Appellant has no prior record. He has been a licensed officer for 17 years and a licensed Master for almost 10 years.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is urged that the Examiner's findings and conclusions as to Appellant's alleged negligence are unreasonable and contrary to the weight of the evidence and law. There was no cause for alarm when the fathometer indicated consistently for almost sixteen minutes that the depth of the water beneath the ship was 24 to 36 feet. Although the ship was one-half mile inshore of the intended course plotted by Appellant, this was no cause for alarm because the chart appeared to be accurate according to various bearings which were taken from the ship, the chart showed sounding of more than 100 fathoms at the point of the grounding and Appellant had changed course fourteen degrees away from the shore prior to the grounding in order to place the vessel on the plotted course line. The conclusion of negligence is based on the hindsight knowledge that H.O. Chart 0026e is not accurate and on speculation that the vessel would not have grounded if she had made a radical alteration of course to the left.

The order of suspension is contrary to the equities of the situation in view of Appellant's prior clear record, his lack of sleep for 24 hours, and the errors on the chart.

It was error for the Examiner to deny Appellant's motion for a mistrial. Prior to the hearing, the Examiner expressed the opinion that the ship was "much too close to shore." This preconceived opinion continued throughout the hearing. Hence, the denial of the motion deprived Appellant of a fair and impartial hearing.

The proximate cause of the grounding was the erroneous chart which Appellant relied on, and not any negligence on the part of Appellant who had no prior personal experience in this area. The law requires only reasonable care under the circumstances rather than the highest degree of caution that can be used.

APPEARANCE: John Paul Howard, Esquire, of Jacksonville, Florida, of Counsel.

OPINION

The above findings of fact are substantially in accord with those of the Examiner and are not disputed by Appellant.

The criterion in this case is whether a prudent navigator, charged with the full responsibility for the safety of his crew, cargo and ship, would have followed the course of conduct pursued by Appellant if the prudent navigator were faced with the same situation under similar circumstances. It is the duty of a Master of a ship to use every reasonable means to avoid dangers in navigation. This required standard of care is substantially in agreement with Appellant's contention that the law did not require of Appellant the highest degree of caution that could be used. Nevertheless, I do not agree with Appellant's conclusions that the erroneous chart was the cause of the grounding and that

Appellant was not negligent since he relied on the proper chart for the area and acted with ordinary caution.

In the case of a grounding, there is a rebuttable presumption or inference of negligence (similar to when a moving vessel strikes a stationary object) because vessels under careful navigators do not run aground in the ordinary course of things. Commandant's Appeal Decisions Nos. 672, 699, 987. There is no evidence in this record of any mechanical failure or any external force affecting the movement of the ship.

I agree with the Examiner that Appellant failed to exercise due caution in navigating his ship too close to the shore in the face of the "CAUTION" printed on the chart and by failing to take prompt action after he was aware of the fathometer readings.

The ship grounded only one-half mile from the 100-fathom curve as indicated on H.O. Chart 0026e. In view of the fact that the 100-fathom curve is shown on C. & G.S. Chart 1112 to be a mile from the shore, the general warning as to inaccuracies which appeared on the chart, the scarcity of soundings recorded on the chart in this area, and the presence of miles of deep water to the west, it is my opinion that it constituted negligence for Appellant to navigate so close to shore especially since he was in waters which were completely strange to him.

Appellant was also negligent when he continued on at full speed without making any substantial change of course after the fathometer repeatedly showed that there were only 4 to 6 fathoms of water beneath the ship. The definitely proved that the chart incorrectly indicated that the ship was outside of the 100-fathom curve. Regardless of this clear evidence of danger, Appellant maintained a speed of 15 knots and made two minor changes of course totaling only 14 degrees. It is my opinion that, under these circumstances, a prudent navigator would have immediately made a radical change of course toward the open sea after he observed fathometer readings of 4 to 6 fathoms when they should have been at least 100 fathoms according to the chart in use. In addition, it would have been advisable to reduce the ship's speed in an attempt to minimize the amount of damage to the ship if she grounded as occurred here. The facts show that the WANG ARCHER was hard aground and could not get off under her own power.

As contended by Appellant, there is no assurance that the ship would not have run aground even if she had changed course radically. But the probability that she would not have gone aground is much greater.

The record does not support Appellant's contention that he was denied a fair and impartial hearing because the Examiner had a preconceived opinion that Appellant was negligent. In his decision, the Examiner stated that he held no personal bias against Appellant. The Examiner also admitted making the statement, prior to the hearing, that the ship was "much too close to shore" but claims that he informed counsel of this and gave him opportunity to file a motion for disqualification of the Examiner at the beginning of the hearing. Nevertheless, the motion was not made until after the Government had introduced its evidence. The Examiner's honesty in telling counsel about this

statement and the hearing record as a whole indicate that Appellant was given a fair and impartial trial in every respect.

Considering all the mitigating factors suggested by Appellant, it is my opinion that the probationary suspension ordered is not excessive under the prevailing circumstances of the case.

ORDER

The order of the Examiner dated at Jacksonville, Florida, on 7 July 1959, is AFFIRMED.

A.C. Richmond
Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 31st day of October, 1960.